IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 29805 of 2006(W)

AGAINST THE ORDER IN IA 1909/2006 IN OS.209/2004 of III ADDL.SUB COURT, KOZHIKODE

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PETITIONER:

K.U.GEEVARGHESE, M-26(A)/76,
K.S.H.B.COLONY, MALAPPARAMBA P.O., CHEVAYOOR,
KOZHIKODE.

BY ADV. SRI.T.R.RAVI
SRI.P.S.MURALI

RESPONDENT:

K.P.VEERANKUTTY, A-90,
KANDAMBATH JAWAHAR NAGAR HOUSING COLONY,
KOZHIKODE-6.

BY ADV. SRI.C.P.MOHAMMED NIAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29805/2006 W

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PLAINT IN O.S.209/2004 ON THE FILE OF SUB COURT, KOZHIKODE.**

EXT.P2; **COPY OF WRITTEN STATEMENT IN O.S.209 OF 2004 ON THE FILE OF SUB COURT, KOZHIKODE.**

EXT.P3: **COPY OF COUNTER STATEMENT IN I.A.513 OF 2005 IN O.S.209/2004.**

EXT.P4: **COPY OF I.A.1909/06 IN O.S.209/04.**

EXT.P5: **COPY OF THE ORDER DTD. 22/07/2006 IN I.A.1909/2006 IN O.S.209/04.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.29805 of 2006

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Dated: 13th July, 2007

JUDGMENT

The grievance of the petitioner who is the plaintiff in a suit for recovery of money on the basis of a promissory note is that the learned Subordinate Judge has by passing Ext.P5 order in I.A.No.1909/06 which was filed by him under Order XI Rule 1 of the C.P.C. declined leave to serve interrogatories as to whether the signature on the suit promissory note is that of the defendant. In fact construing the contentions in Ext.P2 as one denying the execution of the promissory note and denying the genuineness of the signature, the petitioner filed I.A.No.513/05 for forwarding the disputed promissory note to an expert for a report after forensic scrutiny. The learned Subordinate Judge ordered posting of consideration of that I.A. along with the suit. Later the respondent-defendant filed an application I.A.No.2455/04 for a permission to verify the suit promissory note once again so that he can file additional written statement on the basis of the impressions gathered on such verification. Learned counsel for the petitioner submits that the said I.A. was allowed and that the respondent did verify the promissory note as allowed under the I.A. Even then the respondent has not filed

any additional written statement, so submits the counsel. According to him in that context that the instant I.A. under XI Rule 1 was filed so that the respondent will take a firm stand as to whether the signature appearing on the suit promissory note belongs to him. The application should have been allowed by the learned Subordinate Judge, according to him.

2. Mr.C.P.Mohammed Nias, learned counsel for the respondent submits that he is yet to be instructed regarding the order passed by the court on the application for verification. Learned counsel would submit that it cannot be stated that the impugned order is vitiated to the extent of justifying interference under the supervisory jurisdiction of this court. After all what is stated by the learned Subordinate Judge is that execution of the promissory note and the genuineness of the signature are the cardinal issues to be decided in the suit, the suit will be decided by the learned Subordinate Judge.

3. On hearing the learned counsel, I enquired of Mr.Mohammed Nias whether his client admits the signature on the suit promissory note with that of his client. The learned counsel in response invited my attention to paragraphs 3 and 4 of Ext.P2 written statement. On construing those paragraphs, I am of the view that the contention

raised by the respondent is one of denial of execution of the promissory note and one of denial of the genuineness of the signature appearing on the promissory note. This being the position, the application filed by the petitioner under Order XI Rule 1 was unnecessary. The learned Subordinate Judge is directed to prepone the consideration of I.A. No.513/05, hear both sides and pass orders on the same even before special listing the suit for trial.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**